RSC Republican Study Committee
Rep. Jeb Hensarling (R-TX), Chairman
Russ Vought, Executive Director
132 Cannon House Office Building
Washington, DC 20515
www.house.gov/hensarling/rsc
ph (202) 226-9717 / fax (202) 226-1633

Legislative Bulletin…………………………………….…..………August 3, 2007

Contents:

Summary of the Bills Under Consideration Today:

Total Number of New Government Programs: 0

Total Cost of Discretionary Authorizations: $33.0 million over ten years

Effect on Revenue: $1.73 billion increase over ten years

Total Change in Mandatory Spending: $1.72 billion increase over ten years

Total New State & Local Government Mandates: 0

Total New Private Sector Mandates: 2

Number of *Bills* Without Committee Reports: 0

Number of *Reported* Bills that Don't Cite Specific Clauses of Constitutional Authority: 0

H.R. 2776—Renewable Energy and Energy Conservation Tax Act (*Rangel, D-NY*)

Order of Business: The bill is reportedly scheduled to be considered on Friday, August 3rd, subject to a likely closed rule that is expected to merge this bill with the energy omnibus bill, H.R. 3221.

Possible Conservative Concerns: Some conservatives may be concerned about the following provisions in this bill:

- **$15.3 billion in tax increases** over ten years.

- Disincentives for domestic energy production and investment, making foreign energy investment and reliance more attractive.
- The application of Davis-Bacon prevailing wage requirements to all tax-credit bonds.
- The termination of the New York Liberty Zone program in such a way that yields a $2 billion windfall for New York for any transportation infrastructure project.

Summary: H.R. 2776 would increase taxes on certain energy companies and provide a variety of tax incentives for producing renewable energy and for conserving energy, as follows (by title):

Title I—Production Incentives

- Extends the renewable energy tax credit (2.0 cents per kilowatt/hour for electricity generated from wind, biomass, geothermal, solar, landfill gas, trash combustion, etc., indexed for inflation) for an additional 4 years, from the end of 2008 through the end of 2012.

- Allows the tax credits for refined coal and Indian coal to expire at the end of 2008.

- Adds marine and hydrokinetic renewables as a qualifying energy source under the renewable energy tax credit above. Marine renewables include electricity produced from waves, tides, currents, rivers, lakes, streams, irrigation systems, canals, and ocean thermal energy conversion.

- Extends the 30% investment tax credit for solar and fuel cell property for commercial use from the end of 2008 to the end of 2016, and permits the credit to be claimed against the AMT.

- Increases the solar/fuel cell credit limitation for fuels cells from $500 to $1,500 for each .5 kilowatt of capacity and repeals the prohibition against public utilities claiming the credit.

- Creates $2 billion in new clean renewable energy bonds, 100% of the available project proceeds of which would be used for capital expenditures incurred by public power providers or cooperative electric companies to construct one or more qualified renewable energy facilities (using ones or more of the fuels listed above). The bill provides details for calculating the tax credit generated from the purchase of such bonds. In addition, the bonds would be tradable and could not be issued by state and local governments. <u>Davis-Bacon prevailing wage standards would apply to projects funded by these bonds</u>.

- Repeals the $2,000-per-taxpayer cap and the $500-per-half-kilowatt cap on the residential solar and fuel cell credit.

- Eliminates the tax credit for solar water heating property, unless the property receives certification from the non-profit Solar Rating Certification Corporation (or comparable state entity).

- Allows the solar and fuel cell credit to be taken against the AMT.

Title II—Conservation

- Creates a new personal or business tax credit up to $6,000 for plug-in hybrid automobiles (based on battery capacity).

- Phases out the credit applicable to vehicles that have more than 60,000 of them sold in the U.S. (total).

- Extends the alternative fuel vehicle refueling property credit (e.g. ethanol and biodiesel pumps) for one year, from the end of 2009 to the end of 2010. Increases the credit from 30% to 50% of the property value and increases the total taxpayer annual credit cap from $30,000 to $50,000.

- Extends the biodiesel credit and the renewable diesel credit for two years, from the end of 2008 to the end of 2010. Makes the renewable diesel credit technology-neutral and requires that renewable diesel be vehicle-quality fuel.

- Creates a new 50-cents-per-gallon tax credit for producers of cellulosic alcohol (i.e. cellulosic ethanol). The Republican staff of the Ways & Means Committee notes that this credit would be in addition to the general ethanol credit of 51 cents per gallon.

- Makes permanent the income exclusion (up to $20 per month) for bicycle commuting fringe benefits paid by an employer.

- Expands the definition of automobile that would be subject to a longer (i.e. five-year) depreciation schedule to any new vehicle weighing up to 14,000 pounds (current law is 6,000 pounds) and with a cost of $15,300 or greater. The bill also makes certain exceptions for farming vehicles, taxis, ambulances, vehicles with intended room for more than nine people behind the driver's seat, pick-ups with a five-foot bed or greater, and vehicles substantially used to transfer, move, or deliver equipment, inventory, or supplies.

- Terminates the remaining portions of the New York Liberty Zone tax incentives program (implemented to encourage business investment in lower Manhattan)—the first-year 30% depreciation allowance and the additional section 179 expensing in the case of nonresidential real property and residential rental property.

- Requires the federal government to surrender its claim to $2 billion in federal income taxes withheld on New York City and state employees as part of the Liberty Zone program. These surrendered funds could be used by New York for any transportation infrastructure project, including highways, mass transit, railroads, etc.

- Creates $3.6 billion of new tax-credit bonds to be used for qualified energy conservation purposes (as detailed in the bill to include such things as capital expenditures for reducing energy consumption in public buildings by 20%, research grants for carbon capture technologies, mass commuting facilities, projects for "green" building technologies, and pubic education campaigns to promote energy efficiency). States and localities would have to issue the bonds, distributed to them on a per-capita basis (plus a suballocation for large cities and counties). The bonds would be tradable and <u>would be subject to Davis-Bacon requirements</u>.

- Creates $2.4 billion of new tax-credit bonds to be used for residential energy efficiency assistance (as detailed in the bill to include grants or low-interest loans to acquire and install Energy Star items, solar cells, and home improvements yielding a 20% or more reduction in total household energy consumption). States would have to issue the bonds, distributed to them on a per-capita basis. The bonds would be tradable and <u>would be subject to Davis-Bacon requirements</u>. Grants and loans would be capped at $5,000 each, increased to $8,000 and $12,000, respectively, if energy consumption is reduced by 35% and 50%, respectively, and could not be used for recreational or certain telecommunications equipment.

- Extends the efficient commercial building tax deduction from the end of 2008 through the end of 2013. (The current deduction is $1.80 per square foot of the property for which expenditures are made to reduce the energy consumption of a commercial building by 50%.).

- Extends the manufacturer's tax credit for the production of energy efficient dishwashers, clothes washers, and refrigerators—and provides new tax credits for energy efficient dehumidifiers. Limits a manufacturer's total claim of credits under this section to $75 million per year.

- Shortens the depreciable life of qualifying "smart meters" installed by a utility from 20 years to 5 years; requires that a qualifying meter measure and record electricity usage on a time-differentiated basis at least 24 times per day, while providing real-time price and usage data to customers and to the electricity supplier.

<u>Title III—Revenue Provisions</u>

<u>NOTE</u>: According to the Joint Committee on Taxation, Title III of this bill includes <u>$15.3 billion in tax increases</u> over ten years.

- Denies a broad corporate tax deduction for income attributable to the production, refining, processing, transportation, and distribution of oil, natural gas, or any primary product thereof, beginning in 2008. According to the Joint Committee on Taxation, this provision would amount to an **<u>$11.4 billion tax increase</u>** on oil and gas companies over ten years. <u>NOTE</u>: This language is the same as in H.R. 6, the Democrat energy-tax-increase bill from the 100-Hour Agenda in January 2007.

- Extends, from five years to seven years, the amortization of geological and geophysical expenditures for certain large oil companies for the purposes of calculating a tax deduction (and thereby making the resulting tax deduction smaller each year). Such expenditures are exploratory costs for gathering data (e.g. seismic surveys) on where resources are and how best to extract them. According to the Joint Committee on Taxation, this provision would amount to a **$103 million tax increase** on oil and gas companies over ten years. NOTE: This language is the same as in H.R. 6, the Democrat energy-tax-increase bill from the 100-Hour Agenda in January 2007.

- Modifies the method by which oil and gas companies calculate their foreign tax credits. Specifically, the provision would require foreign-based income to be reclassified as foreign oil and gas extraction income (FOGEI) for purposes of calculating the foreign tax credit. The Republican staff of the Ways & Means Committee notes that the rules governing FOGEI are more stringent than the general rules governing calculation of foreign tax credits, resulting in a smaller overall foreign tax credit for companies with non-U.S. oil and gas production income. According to the Joint Committee on Taxation, this section would amount to a **$3.6 billion tax increase** on oil and gas companies over ten years.

- Denies the $1-per-gallon renewable diesel tax credit for the co-processing of biomass with fossil fuel. The Republican staff of the Ways & Means Committee notes that this provision is targeted at denying ConocoPhillips this tax incentive for its combining of biomass into its oil-refining process to produce high-grade renewable diesel. According to the Joint Committee on Taxation, this provision would amount to an **$85 million tax increase** on oil and gas companies over ten years.

- Stipulates that the biodiesel fuels credit is only for biodiesel produced in the United States for consumption in the United States (and is certified as such). According to the Joint Committee on Taxation, this provision would amount to a **$109 million tax increase** on oil and gas companies over ten years.

- Denies a tax credit for ethanol produced outside of the United States for consumption outside of the United States.

Title IV—Other Provisions

- Authorizes $1.5 million for the National Academy of Sciences to study and report to Congress on the sections of the tax code that have the largest effects on carbon and other greenhouse gas emissions.

- Directs the Secretary of Treasury, in connection with the Secretary of Agriculture, the Secretary of Energy, and the EPA Administrator, to enter into an agreement with the National Academy of Sciences to analyze current scientific findings to determine current and future potential for biofuels, as well as such matters as the conversion of corn ethanol plants to cellulosic ethanol, and a comparison of corn ethanol against other types of biofuels.

- Applies Davis-Bacon prevailing wage requirements to all projects funded with the proceeds of any tax-credit bond (not just the ones referenced in this legislation).

Committee Action: On June 19, 2007, the bill was referred to the Ways & Means Committee, which, on the next day, marked up and ordered the bill reported to the full House by a vote of 24-16.

Administration Position: Although Statement of Administration Policy (SAP) was not available at press time, the Administration may well oppose this bill, based on past opposition to such bills as H.R. 6.

Cost to Taxpayers: The Joint Committee on Taxation and CBO estimate that this bill would increase revenues by a net $191 million in FY2008, a net $1.75 billion over the FY2008-FY2012 period, and a net $1.73 billion over the FY2008-FY2017 period.

CBO estimates that the bill would increase mandatory spending by $169.0 million in FY2008, $876.0 million over the FY2008-FY2012 period, and $1.72 billion over the FY2008-FY2017 period.

Lastly, CBO estimates that the bill would authorize appropriations of $4.0 million in FY2008, $17.0 million over the FY2008-FY2012 period, and $33.0 million over the FY2008-FY2017 period.

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: Yes. The CBO cost estimate notes that, "JCT has reviewed the tax provisions of H.R. 2776 and has determined that they contain two private-sector mandates as defined in UMRA: the denial of deduction for income attributable to domestic production of oil, natural gas, or primary products thereof; and the clarification of determination of foreign oil and gas extraction income."

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: The Ways & Means Committee, in House Report 110-214, asserts that, "Pursuant to clause 9 of rule XXI of the Rules of the House of Representatives, the Ways and Means Committee has determined that the bill as reported contains no congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of that Rule."

Constitutional Authority: The Ways & Means Committee, in House Report 110-214, cites constitutional authority in Article I, Section 8, Clause 1 (the congressional power to lay and collect taxes for the common defense and general welfare), as well as in the 16th Amendment (the congressional power to tax incomes).

Outside Organizations: The following is a sample of entities that are opposing H.R. 2776 (ones with a star are scoring or potentially scoring the bill in their annual ratings of Congress):

- American Conservative Union*
- American Petroleum Institute

- Americans for Prosperity
- Americans for Tax Reform*
- Competitive Enterprise Institute
- Council for Citizens Against Government Waste*
- Family Research Council
- FreedomWorks
- Independent Petroleum Association of America
- National Association of Manufacturers
- National Petrochemical and Refiners Association
- National Taxpayers Union*
- Natural Gas Supply Association
- Property Rights Alliance
- 60 Plus
- Small Business and Entrepreneurship Council*
- U.S. Oil & Gas Association

RSC Staff Contact: Paul S. Teller, paul.teller@mail.house.gov, (202) 226-9718